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No. 99-3

IN THE
Supreme Court of the United States

ACE AUTO BODY & TOWING LTD, *et al.*,
Petitioner,
v.
THE CITY OF NEW YORK,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF *AMICI CURIAE* OF THE TOWING AND RECOVERY ASSOCIATION OF AMERICA AND THE UNITED MOTORCOACH ASSOCIATION IN SUPPORT OF THE PETITION

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QUESTIONS PRESENTED

Whether 49 U.S.C. § 14501(c) permits only States to regulate motor carrier safety and preempts political subdivisions altogether from enacting or enforcing laws regulating motor carrier safety as the Court of Appeals for the Eleventh Circuit has held, or, as held by the Court of Appeals for the Second Circuit, Congress has implicitly authorized States to delegate such regulatory authority to their political subdivisions.

Whether State goverment, in exercising authority under 49 U.S.C. § 14501(c)(2)(A), can impose a licensing requirement.

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Pursuant to Rule 37.3 of the Rules of this Court, and with the accompanying written consents of the parties, Towing and Recovery Association of America and United Motorcoach Association submit this brief as amicus curie in support of the petition.*

STATEMENT OF INTEREST

Towing and Recovery Association of America ("TRAA") is the national association of motor carriers

* This brief was not authored in whole or in part by counsel for a party, and no person or entity, other than the *amici curiae* made a monetary contribution to the preparation and submission of this brief.

engaged in the towing and recovery [1] of motor vehicles. TRAA is a federation of fifty state towing and recovery associations and the towing recovery association of the District of Columbia. Together with its fifty-one affiliated associations, TRAA currently represents more than 5000 motor carriers nationwide that engage in towing and recovery operations involving every type and size of motor vehicle that is operated on our Nation's highways.

United Motorcoach Association ("UMA") is the largest trade association of professional motorcoach and bus operating companies in North America. UMA represents more than 850 commercial and private companies nationwide. UMA's member companies provide a full range of passenger services to the public, including scheduled intercity regular route, charter, tour, special operations, school and public transit. UMA also represents some 200 motorcoach and bus manufacturers as well as the motorcoach industry's suppliers and vendors.

Amici have grave concerns regarding the broad effect of the Court of Appeals for the Second Circuit's conclusion that, notwithstanding 49 U.S.C. § 14501(c)(2)'s express preemption of a local government's *direct* regulation of motor carrier safety, local governments may nonetheless exercise such regulatory authority indirectly, through the State's delegation of its authority. As explained below, the Second Circuit's reading of the statute creates a circuit split, effectively nullifies the preemption expressly imposed on local government by § 14501(c)(2)(A), and thereby ushers in the opportunity for local governments

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[1] As used by the towing and recovery segment of the motor carrier industry, "recovery" operations involve the relocation of disabled vehicles in order that they can be towed or moved under their own power; for example, by righting an overturned tank truck, or by pulling a bus out of a ditch. Recovery operations typically require the use of specialized operator skills and equipment, including hydraulic booms and winches, cables, and dollies.

throughout the nation to exercise regulatory authority over motor and air carriers which Congress clearly did not intend for them to have. *Amici* offer the Court their important perspective on the crucial questions presented.

STATEMENT OF CASE

This case presents a fundamental question concerning what, if any, regulatory authority Congress intended to reserve for States and political subdivisions under 49 U.S.C. § 14501(c)(2). Section 14501(c)(2) provides a limited exception to what is otherwise a general preemption of State and local regulation by § 14501(c)(1).[2] Under the latter provision, "a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier" of property. Section 14501(c)(1) is virtually identical to 49 U.S.C. § 41713 (b)(1), which the Court considered in *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374 (1992), and found "to express a broad preemptive purpose." *Id.* at 384.

Section 14501(c)(2), however, provides in relevant part that § 14501(c)(1)'s preemption does not restrict:

> the safety regulatory authority of a *State* with respect to motor vehicles, the authority of a *State* to impose highway route controls and limitations based on the size or weight of the motor vehicles or the hazardous nature of the cargo, or the authority of a *State* to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization.

49 U.S.C. § 14501(c)(2)(A). (Emphasis supplied.)

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[2] The terms "political subdivision" and "local governments" are used interchangeably throughout this Brief.

In the case below, the Second Circuit considered whether laws of New York City, purportedly issued for reasons of safety, but designed and intended to license and thereby limit the particular tow truck companies authorized to provide towing services from scenes of accidents occurring in New York City, fell within the scope of the regulatory authority excepted from preemption by 49 U.S.C. § 14501(c)(2). Fnding New York City's laws to be safety-based, the Second Circuit held the ordinance was within the exception's scope and therefore not preempted, concluding that even though "the text of § 14501 (c)(2)(A), unlike other subsections of § 14501, fails to preserve explicitly the regulatory authority of the political subdivisions of the State . . . we see no reason to construe this language to prevent the State from delegating *its* regulatory authority to a municipality." (Pet. App. 20) (Italics in original.)

REASONS FOR GRANTING THE WRIT

The Second Circuit's decision raises fundamental questions concerning the authority of political subdivisions to regulate motor carriers at all, which affects the operations of not only towing companies, but also any and potentially every other motor carrier of property or passenger throughout the country. Thus the significance and impact of this case is far greater than the Second Circuit's focus on a towing law specifically considered or would suggest.

I. THE DECISION BELOW CONFLICTS WITH THE ELEVENTH CIRCUIT'S DECISION IN *CITY OF ATLANTA*

The Second Circuit's reading of 49 U.S.C. § 14501 (c)(2)(A) conflicts directly with the Eleventh Circuit's decision in *R. Mayer of Atlanta, Inc. v. City of Atlanta (City of Atlanta)*, 158 F.3d 538 (11th Cir. 1998), *cert.*

denied, — U.S. —, 119 S. Ct. 1334 (1999), which the Second Circuit expressly "decline[d] to follow." (Pet. App. 20-22.) As in the instant case, *City of Atlanta* involved a municipality's safety regulations governing towing. However, the Eleventh Circuit, unlike the Second, has held that, while 49 U.S.C. § 14501(c)(2)(A) exempts State safety regulatory authority from preemption, it preempts such regulatory authority when exercised by local or municipal governments.

In reaching its exact opposite statutory interpretation of § 14501(c)(2)(A), the Eleventh Circuit relied, in part, upon the Court's statutory analysis in *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 537 (1994), wherein the Court instructed "it is generally presumed that Congress acts intentionally and purposely when it includes particular language in one section of a statute but omits it in another." 158 F.3d at 545. The Eleventh Circuit found particularly compelling therefore that "§ 14501 contains no fewer than seven express references to the regulatory authority of political provisions in its other subsections, but omits any references to political subdivisions in § 14501(c)(2)(A)," *id.*, and that "§ 14501(c)(2)(A) is the only subsection of the statute that mentions the regulatory authority of the States' *without also mentioning* the regulatory authority of the State's political subdivisions." *Id.* (internal citations omitted) (emphasis supplied). The Eleventh Circuit's reasoning and conclusion was further reinforced by its finding that the omission of the reference to "political subdivisions" in § 14501 (c)(2)(A) does not "reflect[] a drafting error, because a similar preemption provision contained in the Airline Deregulation Act, 49 U.S.C. 41713(b)(4)(B)(I), contains the same omission." *Id.* at 546. Indeed, although 49 U.S.C. § 14501(c)(2) applies to motor carriers of property, the identical language is found also in 49 U.S.C.

§ 14501(a)(1), which pertains to motor carriers of passengers, and in 49 U.S.C. § 41713(b)(4), pertaining to air carriers.

Congress was well aware of the scope of the definition it chose for "State" when § 14501(c) was enacted. *Amici* know of at least sixteen instances in which "State" is defined in title 49, United States Code and the same definition was not used in each provision. To the contrary, the definition specifically selected by Congress was based on the statute's particular purpose and the use to which the definition would be applied. In six of these instances, "State" is defined as the States of the United States, the District of Columbia, Puerto Rico and the territories. In two instances, "State" is defined as the States of the United States, the District of Columbia and Puerto Rico. In four instances, "State" is defined as States of the United States and the District of Columbia. In one instance, "State" is defined as the States of the United States, except Alaska and Hawaii, and the District of Columbia. In one instance, "State" is defined as the States of the United States, the District of Columbia, and the political subdivisions of the States. And, in two instances where the controlling definition of "State" would otherwise have excluded local government, "political subdivisions" was specifically inserted into the provision; *see* 49 U.S.C. §§ 14503 and 33118. Had Congress intended for political subdivisions to have regulatory authority under § 14501(c)(2)(A) it would have provided for that explicitly in the statute and not, as the Second Circuit holds, implicitly through State delegation.

Without mention of the Court's decision in *Resolution Trust Corp.*, or its above-cited guidance on statutory construction, the Second Circuit instead took its lead from the Court's decision in *Medtronic, Inc. v. Lohr*, 518 U.S. 470 (1996) in reaching the outcome below. While two

of the Court's instructions in *Medtronic* may have some relevancy to this case ("the scope of a pre-emption statute must rest primarily on a 'fair understanding of *congressional purpose*,'" 518 U.S. at 485-86 (citation omitted) (emphasis in original), and Congressional intent "primarily is discerned from the language of the pre-emption statute and the 'statutory framework' surrounding it" *id.* at 486 (citation omitted) the Second Circuit's citation to and reliance on *Medtronic* was for neither proposition, but rather for *Medtronic's* general presumption against the preemption of State police authority. Pet. App. 10, 19 and 22. *Amici* submit that, in the latter regard, application of *Medtronic* general presumption is inapposite to § 14501(c) on factual grounds and, therefore, to the matter before this Court.

In *Medtronic*, the Court was asked to consider whether Congress, through the Medical Device Amendments of 1976, had "effectively precluded State courts from affording State consumers *any protection* from injuries resulting from a defective medical device." 518 U.S., at — (emphasis supplied). As the Court pointed out, Medtronic's reading of the statute would have had "the perverse effect of granting *complete immunity* from design defect liability to an entire industry that, in the judgment of Congress needed more stringent regulation . . . [and] remove all means of judicial recourse for those injured by illegal conduct." *Id.* (citations omitted).

The Eleventh Circuit's reading of the statute falls far short of yielding any such "perverse" result. Rather, and consistent with the statute's express wording, even though the Eleventh Circuit's construction of § 14501(c)(2)(A) would foreclose exercise by local governments of some aspect of their regulatory authority, it would not result in giving motor carriers complete immunity from safety regulation. Localities and States would still have the ability

to protect the health and safety of their citizens, but the exercise would be solely by State law or regulation. Thus, in stark contrast to *Medtronic*, § 14501(c)(2)(A) does not present the question of whether fundamental rights of citizens to petition for relief has altogether been taken away by Congress, but rather at what level of government it is appropriate for such relief to occur. In § 14501 (c)(2)(A), Congress said it is appropriate for safety regulation to occur at the state level but not at the local level. *Amici* submit that any predicate underlying the Court's application of its presumption in *Medtronic* therefore is not present here and its application to § 14501 (c)(2)(A), as an appropriate canon of construction, is clearly unwarranted.

Also inapposite is *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597 (1996), which construed preemption of pesticide regulation by local governments under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, 7 U.S.C. 136, *et seq.* Although the Second Circuit only briefly mention *Mortier* (Pet. App. 21), the Eleventh Circuit considered at some length whether *Mortier* "compels a contrary conclusion," *id.* at 546, concluding that *Mortier* "falls short of establishing a rule that the word 'state' must be interpreted to include political subdivisions in all circumstances," *id.* at 547, and "can be distingiushed on its facts, and its construction of the word 'State' need not govern our analysis." *Id.* at 547.

The conflict between the Second Circuit and Eleventh Circuit is significant. If not resolved by the Court, local governments outside of the Eleventh Circuit will have reason, or at the very least the opportunity, to view the Second Circuit's reading of § 14501(c)(2)(A) as the correct statutory interpretation, thereby giving justification to impose their respective set of unique operating restric-

tions on motor carriers performing transportation services within their borders. This was not what Congress intended and the Court should grant certiorari to resolve the circuit conflict between the decision below and the Eleventh Circuit's decision in *City of Atlanta.*

II. THE DECISION BELOW NULLIFIES THE LICENSING PREEMPTION CONGRESS INTENDED

Section 14501(c)'s express use of "motor carriers" provides clear evidence that Congress did not intend for its application, including the limited exception of § 14501(c)(2)(A), to apply solely to towing companies. To the contrary, § 14501(c) was clearly intended to apply to State and local regulation of "motor carriers" in general. H.R. Conf. Rep. 103-677, at 85 (1994), *reprinted in* 1994 U.S.C.C.A.N. 1715, 1757. By focusing its analysis of the challenged New York City laws solely as regulations being applied to towing ("To the extent the text's usage of the term 'motor vehicles' . . . does not exclude the possibility of interpreting the phrase 'safety regulatory authority . . . with respect to motor vehicles' to encompass the authority to enact safety regulations with respect to motor vehicle accidents and breakdowns," Pet. App. 18), the Second Circuit's analysis has read out from § 14501(c)(2)(A) the broader motor carrier context in which Congress had intended it would be applied.

It was in this broader statutory context and recognition of the statute's prospective application to a greater class of motor carriers than towing companies that the Eleventh Circuit, in contrast to the Second Circuit, construed § 14501(c)(2)(A). If read as though the statute was intended to be applied solely to towing companies operating entirely and exclusively within the borders of one city or town, the Second Circuit's reading of § 14501(c)(2)(A) may, for sake of argument, make sense. However,

those were not the facts below. Neither is that the marketplace environment in which Congress understood towing companies or any other motor carriers exclusively operate. Indeed, Congress understood that even those motor carriers which operate exclusively in intrastate commerce may nonetheless be operating in inter-city commerce. Because the vast majority of motor carriers do not operate exclusively within the borders of a single city, *i.e.*, do not operate in intra-city commerce, Congress undertood the need to preempt, and did preempt, local governments from having the means and opportunity to regulate in this area. As the Eleventh Circuit explained, "[b]y withholding the authority to enact safety and insurance regulations from political subdivisions, Congress ensured that counties and municipalities would not enact differing (and perhaps inconsistent) sets of safety and insurance ordinances," 158 F.3d at 546 (parenthetical in original).

However, in addition to holding that political subdivisions may exercise regulatory authority, the Second Circuit's reading of the statute permits States and political subdivisions to exercise regulatory authority over motor carriers in a manner which Congress clearly did not intend —licensing. Under any analysis, including even the Second Circuit's (Pet. App. 22-24), New York City's towing laws operate as and must be viewed as motor carrier operating authority.

The language of § 14501(c)(1) was modeled after virtually identical preemption language contained in the Airline Deregulation Act of 1978, 49 U.S.C. § 41713 (b)(1), language which the Court has held is to be broadly construed. *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992). A fundamental purpose of § 14501(c)'s broad preemption was to prevent State and local governments from either continuing to regulate or

initiating new regulations having any connection with rates, routes or services, including through the imposition of licensing requirements. Congress was therefore concerned that § 14501(c)(2)(A)'s limited exception could improperly be used to circumvent the broad preemption imposed by § 14501(c)(1) and instructed that § 14501 (c)(2)(A) was not intended for this purpose:

> There has been concern raised that States, which by this provision are prohibited from regulating intrastate prices, routes or services, may instead attempt to regulate intrastate trucking markets through its unaffected authority to regulate such matters such as safety, vehicle size and weight, insurance and self-insurance requirements, hazardous materials routing matters. The conferees do not intend for States to attempt to de facto regulate prices, routes or services of intrastate trucking through the guise of some form of unaffected regulatory authority.

H.R. Conf. Rep. 103-677, *supra* at 84 (1994), *reprinted in* 1994 U.S.C.C.A.N. 1715, 1756. While its decision below may acknowledge the foregoing Congressional admonition, Pet. App. 13, the Second Circuit nonetheless summarily dismissed it, or a least gave it the least weight, stating:

> the City's requirements regarding *licensing*, display of information, reporting, recordkeeping, criminal history, insurance, posting of bond, and maintenance of storage and repair facilities . . . are so directly related to safety or financial responsibility and impose so peripheral and incidental an economic burden that no detailed analysis is necessary they fall within the § 14501(c)(2)(A) exemptions.

Pet. App. 22-23 (emphasis supplied).

Under the Second Circuit's reading of the statute, therefore, the imposition by local and State governments of

licensing and related requirements, if done for safety purposes, is permissible. Moreover, the Second Circuit reads the statute to impose a presumptive evidentiary standard and burden of proof on industry which the statute does not. According to the Second Circuit, local and State governments need merely to assert safety as the purpose for their licensing requirement to avoid preemption, and at best only licensing and related requirements which industry must demonstrate impose more than peripheral or incidental economic burdens might not withstand scrutiny.

Clearly, the Second Circuit's reading of § 14501(c) is not what the statute says or how Congress intended for it to be read. Through enactment of § 14501(c)(1), Congress intended to preempt all local and State licensing of motor carriers. While Congress may have allowed State governments to exercise some safety regulatory authority over motor carriers, Congress did not intend to re-authorize local or State governments to impose motor carrier licensing, if done for safety rather than economic purposes, through enactment of § 14501(c)(2)(A). The Second Circuit's reading of § 14501(c) is entirely inconsistent with § 14501(c) and contravenes its express language, clear intent and purpose and renders its broad and unequivocal preemption of licensing by local and State government an absolute nullity.

Thus the conflict between the decision below and the Eleventh Circuit's decision in *City of Atlanta* goes well beyond whether local governments may continue to regulate motor carriers at all. The Court should grant certiorari to resolve the circuit conflict between the decision below and the Eleventh Circuit's decision in *City of Atlanta*.

III. THE DECISION BELOW HAS SIGNIFICANT POTENTIAL IMPACT AND COST TO MOTOR CARRIERS ACROSS THE COUNTRY

A. Unless Certiorari Is Granted, the Second Circuit's Decision Will Foster Additional Licensing of Towing Companies and Other Motor Carriers by Local as Well as State Governments

Currently towing companies across the country are subject to a number of local licensing laws, which would be preempted under the Eleventh Circuit's reading of § 14501 (c), but at this time remain in effect and are unlikely to be overturned in light of the Second Circuit's decision below. While the current licensing laws are not identical to one another, they nonetheless share a number of common elements. This is more than coincidence. The States, cities and other political subdivisions maintain an ongoing awareness, as they should, of statutory schemes used in other communities which are successful as well as have been upheld; they are also well aware of which ones have been struck down. If laws of a major jurisdiction, such as New York City, violate federal law but are nonetheless permitted to stand, other jurisdictions will follow suit and enact similar provisions. Thus there is an even greater likelihood that, if certiorari is not granted, the Second Circuit's decision will serve to provide strong encouragement and greater inducement for local governments throughout the country (as well as State governments) to enact similar motor carrier licensing and related safety-based laws.

Indeed, a Cincinnati law governing towing and wrecker operations, Chapter 869 of the Municipal Code, has served as the model and springboard for many of the local towing laws that currently exist throughout the country.[3] Cincin-

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[3] The Cincinnati was unsuccessfully challenged in 1992 prior to enactment of § 14510(c). *Interstate Towing v. City of Cincinnati,*

nati's law requires towing companies within a 25-mile radius of the city to obtain an operating license to provide any towing services initiated within the city. As a condition of obtaining the license, carriers must pay a fee. More importantly, however, carriers must also comply with the city's unique requirements governing insurance, bonding, vehicle equipment and vehicle inspections. While there are substantial additional requirements, for sake of brevity, the following are several examples of the degree to which such laws go in imposing requirements. Among other things, Cincinnati requires the carrier's insurance policy to contain "an endorsement providing 10 days' notice by the insurer to the city of Cincinnati prior to any material change or cancellation." The Cincinnati law also imposes 43 specific equipment requirements. These include specifications concerning the need for and a description of the type of ax ("single blade, long handled"), broom ("long handle, heavy duty push or standard broom"), tie rope ("at least 25 feet of heavy duty clothesline or sash cord or its equivalent"), and hand tools (standard mechanics hand tools, consisting of wrenches, pliers, screwdrivers) which carriers must carry. Cincinnati also requires vehicles to be equipped with "adequate mirrors affixed in usable position for driver so as not to impede vision to front or sides;" at least six, 30 minutes flares in a protective contained of choice;" and a "2½ lb. or more dry chemical type" fire extinguisher.

In holding that the Atlanta towing law was preempted by § 14501(c)(2)(A), the Eleventh Circuit explained that, "[b]y withholding the authority to enact safety and insurance regulations from political subdivisions, Congress ensured that counties and municipalities would not

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799 F. Supp. 805 (S.D. Ohio 1992), *aff'd*, 6 F.3d 1154 (6th Cir. 1993).

enact differing (and perhaps inconsistent) sets of safety and insurance ordinances," 158 F.3d at 546 (parenthetical in original). Therefore, in addition to the Cincinnati law, the following are examples of other current operating licenses which are representative of the types of dissimilar requirements being imposed by local governments around the country:

- Palm Beach County, Florida (County Ordinance No. 94-2): includes vehicle marking, inspection and insurance requirements; *e.g.*, insurance policies "must be endorsed to provide thirty (30) days notice by registered mail to [the County] of any material change, cancellation or expiration of policy;"

- Mansfield, Ohio (Section 763.02 of the Mansfield "Towing & Impounding Ordinance"): includes 24 equipment requirements; *e.g.*, the need for vehicles to be equipped with: a fire extinguisher "type ABC of at least five (5) pound capacity," at least six, 20 minute flares in a protective container of choice;" and "standard mechanics hand tools;"

- City of Oak Ridge North, Texas (Ordinance 016-97): includes insurance vehicle marking and equipment requirements; *e.g.*, at least one 10-pound or two 5-pound "standard BC type [fire] extinguishers with a gauge, properly filled and readily accessible for use; at least three flares "capable of being seen and distinguished at a distance of not less than a six hundred feet (600′) under normal atmospheric conditions at night;" at least one broom "of a type designed for pushing with an eighteen-inch head and a handle of not less than thirty-six inches;" at least one (1) flat-edged shovel of at least nine inches (9″), with a handle of not less than thirty-six inches;" permit holder's name and

telephone number must be displayed in three-inch letters, and holder's address in two-inch letters, on doors of vehicle;

- Cedar Rapids, Iowa (§ 52A.03 of City Code): includes ten vehicle inspection and equipment, vehicle marking, and insurance requirements; *e.g.*, requires ten days prior written notice of suspension or cancellation of insurance, and business name of company to "be affixed to vehicles and visible from a distance of 50 feet;"
- Blue Springs, Missouri (§ 630.330 of City Code): includes vehicle equipment and marking requirements; *e.g.*, name, address and telephone number of company must be legibly printed on side of vehicle in letters of not less than 1½ inches;
- Columbus, Ohio (Chapter 549 of the City Code): includes requirements for insurance, vehicle inspections and marking; *e.g.*, requires vehicle owner's name and trade name to be "painted on each side of tow truck in lettering at least four (4) inches in height."

Efforts by local governments to impose safety-based licensing and related requirements have not been restricted solely to towing companies, however. Non-resident motor carriers of passengers have similarly been the regulatory target of local government.

For example, in 1995 Washington, D.C. announced a plan to build a "Motor Coach Welcome Center." The City announced that it would construct a coach terminal on New York Avenue, where all non-resident motorcoaches were to be directed upon entry into the city. Passengers were to disembark and continue travel to their city destination by Metro rail, while each motorcoach was to receive a "safety inspection" which would result in the

issuance of a three-day visitors permit. The inspection was to consist of little more than a walk-around visual inspection of the vehicle and cost $95. A similar 90-day vehicle inspection for all non-resident carrier vehicles was in operation in Chicago between 1994 and 1996. Although the motorcoach industry has, to date, been successful in persuading local government to withdraw such requirements, similar success in the future has been made significantly problematic as a result of the Second Circuit's decision below.

Thus there is an even greater likelihood that, if certiorari is not granted, the Second Circuit's decision will provide strong encouragement and inducement for local governments throughout the country, as well as State governments, to enact similar motor carrier licensing and licensing related safety-based laws.

B. The Second Circuit's Decision Necessitates Continued and Costly Court Challenge of Local Licensing Laws on a Locality by Locality Basis to the Detriment of Industry but Also Local Government

Unlike many other statutes, such as the Americans With Disabilities Act, where the issue and outcome of litigation is highly fact-specific, the application of § 14501 (c)'s preemption of regulation by political subdivisions in any given case is not fact-specific. It is absolute. Local as well as State motor carrier licensing laws have been preempted.

Unless certiorari is granted, the decision below gives local jurisdictions a green light to follow the Second Circuit's view of preemption over the Eleventh Circuit, thereby perpetuating continued enforcement of existing local licensing laws and related requirements and at the same time facilitating new sets of regulations affecting not only towing companies but any motor carrier performing trans-

portation services within their borders. This, in turn, will necessitate industry having to continue its challenge of such existing and new laws on a locality by locality basis. *Amici* submit that § 14501(c) does not warrant such continued locality by locality litigation nor the significant costs and drain on the resources of industry, local governments and the courts that such litigation would impose.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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